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Attorneys for Charging Party INTERNATIONAL ASSOCIATION
OF HEAT & FROST INSULATORS AND ALLIED WORKERS,
LOCAL 5

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

COASTAL MARINE SERVICES, INC.,

Respondent,

And

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS AND
ALLIED WORKERS, LOCAL 5,

Charging Party.

Case 21-CA-139031

**REQUEST FOR ADDITIONAL
BRIEFING**

1. This case presents the issue of whether an employer's mandatory arbitration provision violates the Act. The matter is before the Board on Exceptions filed by the Charging Party and Exceptions [should be Cross-Exceptions] filed by the Respondent..

2. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, No. 16-285, together with its decisions in *Ernst & Young LLP v. Morris*, No. 16-300 and *National Labor Relations Board v. Murphy Oil USA, Inc.*, No. 16-307, cited as 584 U.S. ____ (2018). The Court held, in summary, that in light of the Federal Arbitration Act, the Board's Decision in *Murphy Oil* could not foreclose arbitration agreements that prohibited or waived collective or class actions in the context of actions brought under the Fair Labor Standards Act.

3. In the Brief in Support of Exceptions, the Charging Party has raised a number of other issues which were never addressed by the Supreme Court in *Epic Systems*. It should be clear from a review of those Exceptions that the arbitration agreement at issue in this case would be invalid on a number of other grounds raised in those Exceptions and not addressed by the Supreme Court's decision attacking worker rights.

4. The Charging Party requests that the Board issue an Order allowing the parties to simultaneously file supplemental briefs, not to exceed 10 pages within a short period of time to address the issues raised by the Supreme Court's decision in *Epic Systems* and its impact upon the Exceptions and [Cross-]Exceptions pending in this case. This Board may have hoped that the Supreme Court's decision would resolve the cases pending before it. SAD. It does not as reflected in the issues which it must now face and resolve.

Dated: May 25, 2018

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld
DAVID A. ROSENFELD

Attorneys for Charging Party
INTERNATIONAL ASSOCIATION OF HEAT
& FROST INSULATORS AND ALLIED
WORKERS, LOCAL 5

137192\969775

CERTIFICATE OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On May 25, 2018, I served the following documents in the manner described below:

REQUEST FOR ADDITIONAL BRIEFING

- ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 25, 2018 at Alameda, California.

/s/ Karen Kempler
Karen Kempler